

MAY 14 1993 ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re Application of) MM Docket No. 92-207
)
 DIXIE BROADCASTING, INC.) File Nos. BR-881201XN
) BRH-881201XQ
)
 For Renewal of Licenses of)
 Stations WHOS(AM)/WDRM(FM))
 Decatur, Alabama)
)
 To: Honorable Arthur I. Steinberg)
 Administrative Law Judge)

DIXIE BROADCASTING, INC.
REPLY TO MASS MEDIA BUREAU'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW




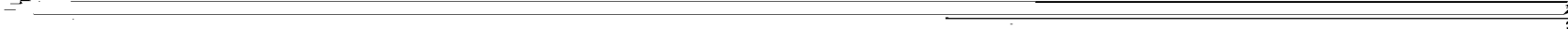





Dixie Broadcasting, Inc. ("DBI"), licensee of Stations WHOS(AM) and WDRM(FM), Decatur, Alabama (the "Stations"), by its attorneys, hereby submits its reply to the "Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law" ("MMB Findings") filed in the above-referenced proceeding on April 30, 1993. All capitalized terms not defined herein shall have the meanings ascribed to them in the "Dixie Broadcasting, Inc. Proposed Findings of Fact and Conclusions of Law" ("DBI Findings") also filed in this proceeding on April 30, 1993.

1. In view of the joint recommendation of the parties as to the disposition of the Renewal Applications, DBI does not intend to flyspeck the MMB Findings to point out each instance of factual inaccuracy. There are certain key areas, however, that DBI feels compelled to address briefly to ensure that the Presiding Judge does not interpret DBI's silence as acquiescence.

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DBI recommends the DBI Findings to the Presiding Judge as the more complete and factually accurate version.

2. The Mass Media Bureau proposed certain findings with respect to the manner in which J. Mack Bramlett reviewed DBI's filings, which totally ignored Mr. Bramlett's undisputed testimony on redirect. Specifically, in paragraph 45 of the MMB Findings, the Bureau states in connection with its discussion of the April 18 Response: "It was Bramlett's practice during this time to simply sign anything his lawyers sent him. (Tr. 563)" The Bureau makes absolutely no mention, however, of Mr. Bramlett's subsequent testimony on redirect on this very point. Mr. Bramlett stated in no uncertain terms that the testimony referenced by the Bureau was not meant to be taken literally. Rather...it was Mr. Bramlett's practice to scan the document



each of these areas the Bureau did not choose to ask Mr. Bramlett further questions, so Mr. Bramlett's testimony on redirect must be credited.^{1/}

3. The final area DBI will address is the specific terms of the reporting conditions proposed by the Mass Media Bureau. DBI has agreed to a short-term renewal for the period ending January 1, 1995, and to the imposition of reporting conditions. The reporting conditions proposed by the Bureau, however, contemplate the filing of EEO reports on September 1, 1993, and September 1, 1994, each with respect to the prior twelve-month period. Under Commission precedent, the short-term renewal period does not commence until the decision resolving the instant proceeding becomes a final order. See Metroplex Communications, Inc., 4 FCC Rcd 847, 848 (A.L.J. 1989), affirmed 4 FCC Rcd 8149, n. 3 (R.Bd. 1989) (subsequent history omitted). It is DBI's EEO efforts during the short-term period only that may be considered in evaluating DBI's renewal applications. As currently proposed, some, if not all, of the period covered by the first EEO report to be filed on September 1, 1993, would be outside the relevant

^{1/} The Bureau also contends that Nat Tate, Sr., was an independent contractor, not a DBI employee, and that he should therefore not be counted as a minority hire during the License Period. (MMB Findings, paragraph 13, n. 1.) Once again, the Bureau relies on selective citations to support its theory. The totality of the evidence compels the conclusion that Mr. Tate was indeed an employee. Mr. Tate considered Mr. Bramlett to be his boss and considered himself an employee of DBI; personnel decisions (including the hiring and firing of Mr. Tate) were controlled by Mr. Bramlett, who himself interviewed all individuals recommended by Mr. Tate and ultimately hired by DBI; and operational matters were discussed with Mr. Bramlett who had final decisional authority. (Tr. 776-777, 785, 803-805.)

period and therefore of no legal significance. DBI therefore submits that the period covered by the EEO reports should be limited to the period between the date the decision in this proceeding becomes final and September 1, 1994, the date of the final EEO report proposed by the Bureau. The determination whether there should be one or two EEO reports should hinge upon the length of the period from finality to September 1, 1994.^{2/}

Respectfully submitted,

DIXIE BROADCASTING, INC.

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May 14, 1993

^{2/} This period may be of sufficient duration to accommodate two meaningful reporting periods of equal length or it may be short enough to reasonably accommodate only one reporting period.

CERTIFICATE OF SERVICE

I certify that the foregoing Dixie Broadcasting Inc.'s Reply to Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law was served on the 14th day of May, 1993 by hand-delivering a copy thereof to the following:

James W. Shook, Esquire
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Honorable Arthur I. Steinberg
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Charles R. T. Smith